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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/182,033
Filing Date: 10/29/1998
Appellant(s): Dale BURNS

Christopher B. Kilner
For Appellant

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Technology Center 2100

EXAMINER'S ANSWER

This is in response to Appellant's brief on appeal filed 9/10/2001.

Real Party in Interest

The Appellants' statement identifying the real party in interest contained in the brief is correct.

Related Appeals and Interferences

The Appellants' statement of the related appeals and interferences contained in the brief is correct.

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Status of Claims

The statement of the status of the claims contained in the brief is correct.

Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

Summary of Invention

The summary of invention contained in the brief is correct.

Issues

The Appellant's statement of the issues in the brief is correct.

Grouping of Claims

The Appellants' statement of the grouping of the claims in the brief is correct.

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Claims Appealed

The copy of the appealed claims contained in the Appendix (pages 24-29) to the brief is correct.

Prior Art of Record

U.S. Patent to Nichtberger et al. No. 4,882,675, filed on November 26, 1984, and issued on November 21, 1989, and U.S. Patent to De Lapa et al. No. 5,822,735, filed on October 3, 1994, and issued on October 13, 1998.

NEW PRIOR ART

No new prior art has been applied in this examiner's answer.

Grounds of Rejection

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation “--- means for each consumer to enter unutilized coupon information from printed coupons is the *only* means

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provided ---" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to support the subject matter set forth in the claims. The specification, as originally filed does not provide support for the invention as now claimed.

The test to be applied under the written description portion of 35 U.S.C. § 112, first paragraph, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of later claimed subject matter. Vas-Cat, Inc. v. Mahurkar, 935 F. 2d 1555, 1565, 19 USPQ2d 111, 1118 (Fed. Cir. 1991), reh'g denied (Fed. Cir. July 8, 1991) and reh'g, en banc, denied (Fed. Cir. July 29, 1991).

The Appellant has amended claims 30-39 to include the limitation "--- means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided ---" and added claims 40-49 containing the limitation "wherein consumers are *limited* to adding unutilized coupon information into their consumer account *solely* from printed coupons in

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their possession.”. However, the specification does not provide an enabling disclosure to support the claimed step of “one means to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their accounts”.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 30-49 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, claims 30-49 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-49 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

In particular, claims 30, and 40, recite the limitations "-- the consumer's consumer identification means --", and "-- said consumer's consumer identification means --" respectively. There is insufficient antecedent basis for these limitations in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 30-49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichtberger et al. (U.S. Patent No. 4,882,675) hereinafter "Nichtberger" in view of De Lapa et al. (U.S. Patent No. 4,882,675) hereinafter "De Lapa".

Claims 30, and 40, Nichtberger teaches an electronic coupon processing system for eliminating a presentation of printed coupons at a checkout register (abstract) comprising:

a plurality of consumer identification means wherein each consumer identification is associated with a consumer (column 5, lines 1-16, and column 5, line 45 thru column 6, line 23);

a plurality of consumer accounts associated with said plurality of consumer identification means (column 11, lines 35-63, and column 17, line 49 thru column 18, line 43);

a database for storing information for each of said plurality of consumer accounts (column 29, lines 32-68);

at least one means separate from a checkout register for each consumer to enter unutilized coupon information from printed coupons in the consumer's possession into said associated consumer account based on input of the consumer's identification means so as to eliminate any

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need to present printed coupons at a checkout register (column 17, line 29 thru column 18, line 43);

at least one checkout register capable of collecting a consumer's purchase information, said register additionally being connected to said database (column 17, line 29 thru column 18, line 43);

means associated with said checkout register for reconciling the unutilized coupon information in each consumer's consumer account with the consumer's purchase information based solely on input of said consumer's consumer identification means (column 17, line 29 thru column 18, line 43); and

means for updating said consumer's consumer account to reflect utilization of coupons (column 17, line 29 thru column 18, line 43), wherein one means for each consumer to enter unutilized coupon information from printed coupons provided for consumers to add unutilized coupon information into their consumer account (column 29, lines 56-68).

Nichtberger fails to teach that the one means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their consumer account.

De Lapa teaches that the one means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their consumer account (column 9, line 32 thru column 12, line 34).

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It would have been obvious to one of ordinary skilled in the art at the time the Appellant's invention was made to modify the teachings of Nichtberger to include that the one means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their consumer account, because it greatly improves the efficiency of the system by substantially reducing redemption and clearing costs, reducing fraud by destroying paper coupons by the CDR unit once inserted and read, also, it would integrate currently used system into the invention (see Nichtberger column 29, lines 56-68).

Claims 31, and 41, Nichtberger teaches the use of a consumer's frequent shopper card as a consumer identification means (abstract).

Claims 32, and 42, Nichtberger teaches that additional unutilized coupon information is added to a consumer account by the system based on market information collected for a consumer associated with said consumer account (column 18, lines 5-41, and column 28, line 51 thru column 29, line 68).

Claims 33, and 43, Nichtberger teaches that said database is connected to registers at a particular store or group of stores (fig. 1, and column 17, line 29 thru column 18, line 43, and column 29, lines 13-68).

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Claims 34, and 44, Nichtberger teaches that at least one means for each of said plurality of consumers to enter unutilized coupon information from printed coupons in their possession consists of a scanner (column 29, lines 56-68).

Claims 35, and 45, Nichtberger teaches that said scanner is located in a store and said store further includes means for viewing and a printer for providing a printout of unutilized coupon information in a consumer's account based on input of a consumer's consumer identification means (fig. 1, column 5, lines 1-16, column 11, lines 35-63, and column 29, lines 13-68).

Claims 36, and 46, Nichtberger fails to teach that the printout includes an aisle location for products associated with said coupon information in said consumer account.

Official Notice is taken that printing an aisle location on a coupon is old and well known in the art.

It would have been obvious to one of ordinary skilled in the art at the time the Appellant's invention was made to modify the teachings of Nichtberger to include an aisle location for products associated with said coupon information in said consumer account, because it greatly improves the efficiency of the system by providing the consumer with a coupon that contains the product location in the store which saves the consumer time in locating the product.

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Claims 37, and 47, Nichtberger teaches that said means for reconciling automatically sends both purchase information and coupon information directly to a clearinghouse or a manufacturer for reimbursement (column 17, line 48 thru column 18, line 41).

Claims 38, and 48, Nichtberger fails to teach the use of Internet to review unutilized coupon information in a consumer's account based on input of a consumer's consumer identification means.

Official Notice is taken that reviewing coupons through the Internet is old and well known in the art.

It would have been obvious to one of ordinary skilled in the art at the time the Appellant's invention was made to modify the teachings of Nichtberger to include the use of Internet to review unutilized coupon information in a consumer's consumer account based on input of said consumer's consumer identification means, because it provides convenience to the user by allowing the user to access various supermarket CDR units, and review, select, and retrieve coupon information directly from the operations center.

Claims 39, and 49, Nichtberger teaches the means to provide a printout of unutilized coupon information in a consumer's account (column 5, lines 1-16, and column 11, lines 35-63).

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Response to Argument

The Appellant raises various points in the argument's section of the appeal brief.

In the arguments, the Appellant argues in substance that:

a) "Appellant submits that the drawing figures comply with 37 CFR §1.183(a) with respect to the claim language "means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their consumer account" because the "Consumer Brings Coupons" box 110 of figure 1 and the "Consumer With Coupons" box 110 of figure 3 are the inputs leading to the only arrows entering the Coupon Database 100. If Appellant illustrates only one path from the consumer with coupons to the database, as in figures 1 and 3, it is unclear how else an "*only* means" could be illustrated."

In response to a):

It is clear from the figures that the customer brings coupons as in (figure 1, element 110), and (figure 3) the inputs leading to the only arrows entering the Coupon Database 100. However, customer database 200 is another input leading to the arrows entering the Coupon Database 100. These issues are irrelevant with respect to the objection to the drawings. The word *only* was added to the claims only to overcome the teachings of Nichtberger which is the combination of presenting coupons to the consumer electronically (abstract) and scanning paper coupons using a

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scanner that reads UPC codes on paper coupons (column 29, lines 56-57). There is no indication in Appellant's drawings nor in the disclosure that these are the *only* means provided for the consumer to enter coupons to the customer database. Figure 1, element 110 does not indicate that the coupon is a printed coupon. Also, figure 1, element 120 does not state that printed coupons is only form used for data input, as a matter of fact in box 120, the use of ETC. teaches away from the claimed language "means for each consumer to enter unutilized coupon information from printed coupons is the *only* means provided for consumers to add unutilized coupon information into their consumer account". In the specification, page 12, lines 10-11, it states that "Consumers can continue to clip coupons from any newspaper, collect coupons from inserts, *receive coupons by electronic means, or any other method*, clearly shows that printed coupons is not the only means used in the present invention to add coupons to the consumer's account.

b) "Appellant submits that the specification provides adequate written description to support "wherein ...means for each consumer to enter unutilized coupon information from printed coupons is the only means provided for consumers to add unutilized coupon information into their consumer account" in claims 30-39 and "wherein consumers are limited to adding unutilized coupon information into their consumer account solely from printed coupons in their possession" in claims 40-49. The written description providing support for this aspect of the present invention is found primarily in the explicit definition of coupons found on page 6: "The term coupons, as used herein, shall mean any mode of communication with a consumer or a potential consumer

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offering a specific discount to the consumer wherein the consumer needs to *bring such proof* back to a store for redemption." Emphasis added. By defining the term coupon in such a manner, other means of entering coupon information into the database are thereby eliminated, since a coupon, by definition, must be capable of being brought with the consumer."

In response to b):

The above response to argument a) also applies to the response to this argument. In addition, in the specification page 6, line 21 thru page 7, line 2, it states "One of the options contemplated by the present invention is that a consumer selects the coupons and brings them to a data processing center in the store or at any other convenient location." This clearly shows that the word *only* was added to the claims to overcome the teachings of Nichtberger. Thus, the specification has no support for this specific limitation.

In the above argument and in providing the definition of a coupon, Appellant states that "The term coupon, as used herein, shall mean any mode of communication with a consumer --- wherein the consumer needs to *bring such proof* back to a store for redemption.", "--- any mode of communication---" can be done electronically, and for the consumer to bring such proof back to a store can also be performed electronically. No where in this definition it shows that the coupon is *only* a printed coupon or a paper coupon.

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c) Appellant submits that the subject matter of claims 30-49 has been described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention for the reasons cited in the preceding paragraph.

In response to c):

The above responses to sections a) and b) applies to the argument c).

d) "Appellant submits that the terms "the consumer's consumer identification means" and "said consumer's consumer identification means" have sufficient antecedent basis in the claims since both claims have antecedent basis in the form of "a consumer", "a plurality of consumers", or "each consumer" (see lines 4 and 8 of claim 30 and lines 3 and 8 of claim 40), claim 30 provides for "a plurality of consumer identification means wherein each consumer identification means is associated with a consumer" and claim 40 provides "associating a plurality of consumers with a plurality of consumer identification means" such that each of the/said consumers has "the (or said) consumer's consumer identification means."

In response to d):

Appellant's arguments with respect to section d) have been fully considered and deemed to be persuasive. Therefore, the claims rejection under 35 USC 112 2nd has been withdrawn.

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e) With respect to the claims rejection under 35 USC 103 as being obvious over Nichtberger et al. in view of De Lapa et al.. The Appellant argues in substance;

“There is no suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the electronic coupon system of Nichtberger et al. with the paper coupon system of De Lapa et al. in order to include that the one means for each consumer to enter unutilized coupon information from printed coupons is the only means provided to consumers to add unutilized coupon information to their consumer account. Nichtberger et al. cannot be used to render the present claims obvious under 35 USC 103 because, as a whole, it teaches away from the present invention.”

“Although col. 29, lines 56-68 suggest the addition of a paper coupon scanner to the system of Nichtberger et al., the primary purpose of the Nichtberger et al. patent is to distribute and redeem coupons electronically with a paper less system. To accomplish this, customers make an electronic selection of coupons from a display. Therefore, to eliminate the electronic selection of coupons by customers as a distribution means, as would be necessary to make such an obviousness rejection, would destroy the primary purpose of the Nichtberger et al. patent and make it unsatisfactory for electronic coupon distribution.”

“The secondary reference, De Lapa et al., fails to teach or suggest anything that would correct this deficiency in Nichtberger et al. De Lapa et al. was relied on in the rejection for teaching "that the one means for each consumer to enter unutilized coupon information from printed coupons is the only means for consumers to add unutilized coupon information into their

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consumer account." However, the cited portion of De Lapa et al., as well as the rest of the reference, fails to disclose or teach that consumers can add unutilized coupon information to their accounts."

In response to e):

In response to Appellant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, De Lapa et al. reference was relied upon to teach the step of entering unutilized coupon information from a printed coupon is the only means provided to enter coupons into a consumer account by using a scanner to scan a UPC code (column 9, lines 32 thru column 12, line 34). Appellant's argues that "the cited portion of De Lapa et al., as well as the rest of the reference, fails to disclose or teach that consumers can add unutilized coupon information to their accounts." However, Nichtberger al. already teaches that consumers can add unutilized coupon information to their accounts using a scanner to scan a UPC code on a paper coupon (column 29, lines 56-68). This section of Nichtberger et al. (column 29, lines 56-68), clearly provide the motivation to combine both references since Nichtberger teaches both steps of entering coupons

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to the consumers account electronically and manually. One of ordinary skilled in the art would be motivated to do so because, it greatly improves the efficiency of the system by substantially reducing redemption and clearing costs, reducing fraud by destroying paper coupons by the CDR unit once inserted and read, also, it would integrate currently used system into the invention (see Nichtberger column 29, lines 56-68).

In addition, interpreting the claims in light of the above objection to the specification under 35 U.S.C. § 112, first paragraph, as failing to provide support for the invention as now claimed, and the 112 1st rejection, as containing subject matter (*--only means--*) which was not described in the specification, De Lapa et al. reference need not to be introduced to show the teachings of this feature. Nichtberger et al. teaches both steps of entering unutilized coupons information by a consumer to the consumers account electronically and manually (abstract, and column 29, lines 56-68), and Appellant's disclosure also uses the same methods (specification, page 12, lines 10-11).

f) "claims 36 and 46 were rejected as being obvious over Nichtberger et al. in view of De Lapa et al., and further in view of Official Notice that "printing an aisle location on a coupon is old and well known in the art." Firstly, Appellant traverses this statement and requests a reference showing this teaching. Secondly, claims 36 and 46 are not drawn to "printing an aisle location on a coupon," but rather to providing a printout of the aisle locations for products associated with a

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consumer's unutilized coupon information. As such, the official Notice fails to teach or fairly suggest the claimed limitation.”

In response to f);

It is clear from the record of the prosecution of the instant application that Appellant **did not** “seasonably” challenge the Examiner’s taking of Official Notice. It is clear that the Examiner took Official Notice as far back as the first Office Action (mailed 10/12/00) and no challenge was presented in the response to the first Office Action filed 2/21/01. It is clear from reading the response to the first Office Action that Appellant had no specific problem with the Examiner’s taking of Official Notice (Appellant did not request that a reference backing-up the Official Notice to be cited). It was only after the Examiner maintained the Official Notice and made the rejection final that Appellant changed their point of argument and requested a reference in support of the Official Notice.

“If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well known statement in the next response after the Office Action in which the well known statement was made.” (See MPEP 2144.03).

However, in an effort to advance prosecution, two references are being supplied and listed below.

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1) Holman US Patent 5,287,181, Feb. 15, 1994 (column 11, lines 2 thru 16, and column 19, line 3 thru 21).

2) Matthias US Patent 6,151,587, Nov. 21, 2000 (column 4, lines 38 thru 47).

In response to Appellant's argument that claims 36 and 46 are not drawn to "printing an aisle location on a coupon," but rather to providing a printout of the aisle locations for products associated with a consumer's unutilized coupon information. The Examiner respectfully directs the Board's and Appellant's attention to claims 35, and 45 which claims 36, and 46 depend on respectively, these claims state that "-- a printer for providing a printout of unutilized coupon information ---", and then claims 36, and 46, state that "--said printout--". It is clear from the claimed limitations that the printout is a printout of coupons that contain aisle locations.

g) claims 38 and 48 were rejected as being obvious over Nichtberger et al. in view of De Lapa et al., and further in view of Official Notice that "reviewing coupons through the Internet is old and well known in the art." Again, Appellant traverses this statement and requests a reference showing this teaching. Also, claims 38 and 48 are not merely drawn to "reviewing coupons through the Internet," but rather to providing Internet review of unutilized coupon information in a consumer's consumer account based on input of said consumer's consumer identification means.

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In response to g):

It is clear from the record of the prosecution of the instant application that Appellant **did not** “seasonably” challenge the Examiner’s taking of Official Notice. It is clear that the Examiner took Official Notice as far back as the first Office Action (mailed 10/12/00) and no challenge was presented in the response to the first Office Action filed 2/21/01. It is clear from reading the response to the first Office Action that Appellant had no specific problem with the Examiner’s taking of Official Notice (Appellant did not request that a reference backing-up the Official Notice to be cited). It was only after the Examiner maintained the Official Notice and made the rejection final that Appellant changed their point of argument and requested a reference in support of the Official Notice.

“If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well known statement in the next response after the Office Action in which the well known statement was made.” (See MPEP 2144.03).

However, in an effort to advance prosecution, a reference is being supplied and listed below.

- 1) Christensen US Patent 6,035,280, Mar. 07, 2000 (column 11, line 62 thru column 15, line 36).

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In response to Appellant's argument that claims 38 and 48 are not drawn to "reviewing coupons through the Internet," but rather to providing Internet review of unutilized coupon information in a consumer's consumer account based on input of said consumer's consumer identification means. Nichtberger et al. already teach the step of providing unutilized coupon information in a consumer's consumer account based on input of said consumer's consumer identification means. Nichtberger et al. fail to teach the step of reviewing these coupons on the Internet, and an Official Notice was taken thereof. Christensen (column 11, line 62 thru column 15, line 36) is introduced in support of taken the Official Notice and also teaches the step of providing Internet review of unutilized coupon information in a consumer's account based on input of said consumer's identification means (ID).

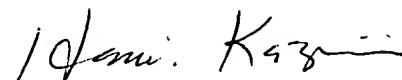
The above responses to arguments applies to the remaining claims since Appellant does not provide arguments why each of the dependent claims is separately patentable and relies on the arguments regarding the independent claims.

As per the above arguments, Appellant appears to argue sections a) thru g) above, and the examiner has properly answered all the arguments presented.

For the above reasons, it is respectfully submitted that the rejections should be sustained.

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Respectfully Submitted,



Hani Kazimi

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November 30, 2001

Conferee



Eric Stamber

Acting SPE

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November 30, 2001



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